

Court No. - 12

**Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5473 of 2022**

**Applicant :- Atul Kumar Singh Alias Atul Rai S/O Shri Bharat Singh**

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home**

**Counsel for Applicant :- Kaustubh Singh**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Dinesh Kumar Singh,J.**

1. Present application under Section 439 Code of Criminal Procedure, 1973 has been filed by the accused-applicant seeking bail in FIR No.0309 of 2021 registered against the accused-applicant and another co-accused under Sections 120B, 167, 195A, 218, 306, 504 and 506 IPC, Police Station Hazratganj, District Lucknow.

2. The accused-applicant is a Member of Parliament, who got elected on symbol of Bahujan Samajwadi Party from Ghosi Lok Sabha Constituency of Uttar Pradesh in 2019 General Elections of Lok Sabha.

3. The accused-applicant to his credit so far has 23 criminal cases, which include cases of kidnapping, murder, rape and other heinous offences. List of those cases including the present one and their status has been given in para 38 of the affidavit filed in support of the present bail application. The cases to the credit of accused-applicant which are given in para 38 of the affidavit are reproduced hereunder:-

“(i) Case Crime No.Nil, under Sections U.P. Gangsters Act, P.S. Lanka, District Varanasi;

(ii) Case Crime No.Nil, under Sections 66E I.T. Act, 120B IPC,

(iii) Case Crime No.209 of 2011, under Sections 307, 333, 120 IPC, 7 C.L.A. Act, P.S. Cantt, Varanasi;

(iv) Case Crime No.396 of 2011, under Sections 364, 302, 120B IPC, P.S. Cantt, Varanasi;

(v) Case Crime No.211 of 2011, under Sections 386, 504 IPC, 7 C.L.A. Act, P.S. Cantt, Varanasi;

- (vi) Case Crime No.397 of 2011, under Sections 307, 353, 333, 338, 224, 225, 419, 120B IPC, 7 C.L.A. Act, P.S. Cantt, Varanasi;
- (vii) Case Crime No.401 of 2011 under Sections 147, 148, 149, 307, 120B IPC, P.S. Cantt, Varanasi;
- (viii) Case Crime No.356 of 2011, under Sections 3(1) U.P. Gangsters Act, P.S. Cantt, Varanasi;
- (ix) Case Crime No.511 of 2011, under Sections 3(1) U.P. Gangsters Act, P.S. Cantt, Varanasi;
- (x) FIR No.185 of 2018, under Sections 364, 504 and 506 IPC, P.S.Cantt, Varanasi;
- (xi) Case Crime No.881 of 2006 under Sections 376, 420, 504, 506 IPC, P.S.Phulpur, Varanasi;
- (xii) FIR No.548 of 2019, under Sections 376, 540, 506, 504 IPC, P.S.Lanka, Varanasi;
- (xiii) Case Crime No.834 of 2017, under Sections 147, 148, 307, 342 IPC, P.S. Lanka, Varanasi;
- (xiv) Case Crime No.09 of 2009, under Sections 342, 386, 504, 506, 427 IPC, P.S.Manduadeeh, Varanasi;
- (xv) Case Crime No.11 of 2009, under Section 3/25 Arms Act, P.S. Manduadeeh, Varanasi;
- (xvi) Case Crime No.76 of 2009, under Sections 3(1) U.P. Gangsters Act, P.S. Manduadeeh, Varanasi;
- (xvii) Case Crime No.261 of 2010, under Section 110G Act, P.S. Manduadeeh, Varanasi;
- (xviii) Case Crime No.211 of 2011, under Sections 3/25 Arms Act, P.S.Rohaniya, Varanasi;
- (xix) Case Crime No.17 of 2011, under Sections 147, 148, 149, 302, 120B IPC, P.S. Rohaniya, Varanasi;
- (xx) Case Crime No.545 of 2009, under Section 3(1) U.P. Gangsters Act, P.S.Rohaniya, Varanasi;
- (xxi) Case Crime No.485 of 2009, under Sections 147, 148, 323, 504, 427, 452 IPC, P.S. Rohaniya, District Varanasi;
- (xxii) Case Crime No.203 of 2009, under Sections 504, 506 IPC, P.S. Rohaniya, Varanasi; and

(xxiii) Case Crime No.225A of 2003, under Sections 147, 323, 504, 506 IPC, P.S. Rohaniya, Varanasi.”

4. It is stated in para 38 of the affidavit that out of 23 cases, only 12 are still pending against the accused-applicant. The close scrutiny of the averments of para 38 of the affidavit would reveal that though the accused-applicant has secured acquittal in some of the cases against him but some of the heinous cases including murder and rape etc., are still pending against him in the Courts.

5. The background of the present case is that a case was registered against the accused-applicant being FIR No.548 of 2019 under Sections 376, 420, 406, 506 IPC at Police Station Lanka, District Varanasi on a complaint by the victim, who later on attempted to commit suicide along with her friend within the precincts of the Supreme Court India on 16.08.2021. They were admitted in very serious and critical conditions in Ram Manohar Lohia Hospital, New Delhi and later on died on 21.08.2021 and 24.08.2021 respectively.

6. Present accused-applicant is a ‘Bahubali, a criminal turned politician which is evident from his long criminal history of heinous offences given in para 38 of the affidavit. The police after investigating the offence filed a charge-sheet against the accused-applicant in the said FIR No.548 of 2019 (supra). In order to terrorize and put undue pressure on the victim/prosecutrix, the accused-applicant got several cases registered against her and her friend/witness so that they would not support the prosecution case.

7. On 10.11.2020, the victim gave an application to the Senior Superintendent of Police, Varanasi alleging that co-accused-Amitabh Thakur, an Ex IPS officer was manufacturing false documents/evidence against the victim and her friend to favour of present accused-applicant on monetary consideration. It was alleged that prosecutrix’s dignity, honour and image were being besmirch and tarnished. The accused and co-accused were abating and drawing her close to commit suicide. She was being continuously harassed physically and mentally and subjected to cruelty to change her stand before the Court. The accused-applicant and his henchman were employing all kinds of undue pressure on her to change her stand before the Court and turn hostile. She made allegations against the co-

accused-Amitabh Thakur, who in active connivance with the present accused-applicant, extended threat to her life. She also said that she would be compelled to commit suicide because of the accused-applicant and co-accused-Amitabh Thakur.

**8.** The victim and her friend-Satyam Prakash Rai, thereafter, on 16.08.2021 attempted to commit suicide outside the Gate No.6 of the Supreme Court and went live on Facebook making serious allegations against the accused-applicant and co-accused-Amitabh Thakur. Statements made by two victims live on Facebook have been treated as dying declarations.

**9.** The Director General of Police constituted a Two Members Committee consisting of Director General, U.P. Police Recruitment and Promotional Board and Additional Director General, Women and Child Security Organization, Lucknow. The said Committee submitted its report on 27.08.2021. On the basis of said report, a written complaint was given by Sub Inspector Daya Shankar Dwivedi at Police Station Hazratganj, which is the basis of the FIR in question registered against the accused-applicant and co-accused.

**10.** Report of the two members team on the basis of which the FIR in question has been registered would mention that Bharat Singh, father of the accused-applicant gave an application on 03.03.2020 to S.S.P. Varanasi requesting him to get further investigation conducted under Section 173(8) Cr.P.C. in FIR No.548 of 2019 (supra) registered against the accused-applicant.

**11.** Then, Senior Superintendent of police, Varanasi marked the said application to the then Circle Officer, Bhelupur, Mr.Amresh Kumar Singh. Mr.Amresh Kumar Singh prepared a report on the application and in last paragraph of his report said that the FIR No.548 of 2019 (supra) was falsely lodged in conspiracy of the prosecutrix, her friend, Satyam Prakash Rai, Angad Rai and Vijay Shankar Tiwari and recommended for fresh investigation under Section 173(8) Cr.P.C. The case was pending in the Court but the Circle Officer, Amresh Kumar Singh made available the said report to co-accused-Amitabh Thakur and other persons under Right to Information Act despite the case being pending in the Court. This report was made public to defame the victim/prosecutrix and tarnish her character and dignity. It was made public to weaken the case against the accused-

applicant. The Report of C.O. Bhelupur was a preliminary report on the application for further investigation, and final decision for further investigation was yet to be taken but the said report was made public in order to put undue pressure on the prosecutrix and her friend so that they should not support the prosecution case against the accused-applicant.

**12.** It is alleged that when the accused-applicant and his goons were not successful in breaking down/winning the victim and the witness, they put all kind of pressure and tortured them physically and mentally. Circle Officer, Bhelupur also assisted the accused-applicant. The victim and her friend were so much harassed and tortured that they became desperate as they perceived that they would not get justice. They had fears about their lives. Their dignity, character and image were being tarnished and besmirch. Under these circumstances, they went to Supreme Court, highest seat of justice and attempted suicide outside the Supreme Court gate and later on they died during the course of treatment. Co-accused-Amitabh Thakur ex-IPS officer has been granted bail by this court vide order dated 14.03.2022 but the case of the accused-applicant is different from the co-accused.

**13.** It is unfortunate and the greatest irony of the largest democracy of the world that as many as 43 percent of the Member of Lok Sabha who got elected in 2019 general elections are having criminal cases including cases related to heinous offences pending against them.

**14.** A constitution Bench of the Supreme Court in the case of **Public Interest Foundation & Ors vs Union of India & Anr : (2019) 3 SCC 224** has taken note of 244th Law Commission report in which it was said that 30 per cent or 152 sitting M.P.s were having criminal cases pending against them, of which about half i.e. 76 were having serious criminal cases. This phenomenon has increased with every general election. In 2004, 24 per cent of Lok Sabha M.Ps. had criminal cases pending, which increased to 30 per cent in 2009 elections. In 2014, it went up to 34 per cent and in 2019 as mentioned above, 43 per cent Members of Parliament who got elected for Lok Sabha are having criminal cases pending against them. The Supreme Court has taken judicial notice of criminalization of politics and imperative needs of electoral reforms. There have been several instances of persons charged with serious and heinous

offences like murder, rape, kidnapping and dacoity got tickets to contest election from political parties and even got elected in large number of cases.

**15.** The Supreme Court has said that this leads to a very undesirous and embarrassing situation of law breakers becoming law makers and moving around police protection. The Supreme Court in the said case has directed the Election Commission of India to take appropriate measures to curb criminalization in politics but unfortunately collective will of the Parliament has not moved in the said direction to protect the Indian Democracy going in the hands of criminals, thugs and law breakers. If the politicians are law breakers, citizens cannot expect accountable and transparent governance and the society governed by the rule of law be an utopian idea. After independence with every election, role of identities such as caste, community, ethnicity, gender, religion etc, has been becoming more and more prominent in giving tickets to winnable candidates. These identities coupled with money and muscle power has made entry of criminals in politics easy and every political party without exception (may be with some difference in degree and extent) uses these criminals to win elections. Giving tickets to candidates with serious criminal charges would break the confidence and trust of the civil society, law abiding citizens of this country in the electoral politics and elections.

**16.** No one can dispute that the present day politics is caught in crime, identity, patronage, muscle and money network. Nexus between crime and politics is serious threat to democratic values and governance based on rule of law. Elections of Parliament and State Legislature and even for local bodies and panchayats are very expensive affairs. The record would show that the elected members of Lok Sabha with criminal records are extremely wealthier candidates. For example, in 2014 Lok Sabha election 16 out of 23 winners having criminal charges in their credit related to murder were multi-millionaire. After candidates get re-elected, their wealth and income grows manyfold which is evident from the fact that in 2014, 165 M.Ps. who got re-elected, their average wealth growth was Rs.7.5 Crores in 5 years.

**17.** Earlier, 'Bahubalis' and other criminals used to provide support to candidates on various considerations including caste, religion and political

shelter but now criminals themselves are entering into politics and getting elected as the political parties do not have any inhibition in giving tickets to candidates with criminal background including those having heinous offence(s) registered against them. Confirmed criminal history sheeters and even those who are behind bars are given tickets by different political parties and surprisingly some of them get elected as well.

**18.** It is the responsibility of the Parliament to show its collective will to restrain the criminals from entering into the politics, Parliament or legislature to save democracy and the country governed on democratic principles and rule of law.

**19.** There is responsibility of civil society as well to rise above the parochial and narrow considerations of caste, community etc and to ensure that a candidate with criminal background does not get elected. Criminalization of politics and corruption in public life have become the biggest threats to idea of India, its democratic polity and world's largest democracy. There is an unholy alliance between organized crime, the politicians and the bureaucrats and this nexus between them have become pervasive reality. This phenomenon has eroded the credibility, effectiveness, and impartiality of the law enforcement agencies and administration. This has resulted into lack of trust and confidence in administration and justice delivery system of the country as the accused such as the present accused-applicant win over the witnesses, influence investigation and tamper with the evidence by using their money, muscle and political power. Alarming number of criminals reaching Parliament and State Assembly is a wake up call for all. Parliament and Election Commission of India are required to take effective measures to wean away criminals from politics and break unholy nexus between criminal politicians and bureaucrats.

**20.** This unholy nexus and unmindfulness of political establishment is the result of reaching person like the accused-applicant, a gangster, hardened criminal and 'Bahubali' to the Parliament and becoming a law maker. This Court, looking at the heinousness of offence, might of the accused, evidence available on record, impact on society, possibility of accused tampering with the evidence and influencing/ winning over the witnesses by using his muscle and money power does not find that there is a ground

to enlarge the accused-applicant on bail at this stage. This bail application is thus, *rejected*.

**Order Date:-07.06.2022**

prateek